

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

|             |   |                      |
|-------------|---|----------------------|
| IN RE:      | § | (CHAPTER 11)         |
|             | § |                      |
| THINK3 INC. | § | CASE NUMBER 11-11252 |
|             | § |                      |
| DEBTOR.     | § |                      |

**DEBTOR’S MOTION TO AMEND ORDER GRANTING DEBTOR’S EMERGENCY  
MOTION FOR ORDER (1) AUTHORIZING CONTINUED USE OF EXISTING  
BUSINESS FORMS AND RECORDS; AND (2) AUTHORIZING MAINTENANCE OF  
EXISTING CORPORATE BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM**

think3 Inc., debtor and debtor-in-possession in the above-referenced chapter 11 case (the “Debtor”), files this Debtor’s Motion to Amend Order Granting Debtor’s Emergency Motion for Order (1) Authorizing Continued Use of Existing Business Forms and Records; and (2) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System (the “Motion”), and respectfully represents the following:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

**Background**

**A. The Debtor’s Chapter 11 Case**

2. The Debtor, together with its subsidiaries, is a global leader in the computer-aided design and product lifecycle management software market. The Debtor’s principal place of business is Austin, Texas. The Debtor also conducted business in Italy through a branch office (the “Italian Branch”). The Debtor has a worldwide presence through six subsidiaries, including think3 SRL (based in Italy) (the “Italian Subsidiary”).

3. On March 14, 2011, several creditors commenced an insolvency proceeding against the Debtor and the Italian Subsidiary in the Court of Bologna, Italy (the “Italian Court”). The Italian insolvency proceeding is case number 69/2011 (the “Italian Proceeding”). The Italian Court appointed Dr. Andrea Ferri as trustee (the “Italian Trustee”) for the think3 Inc. In the Italian Proceeding, the Italian Court appointed Massimiliano Magagnoli as the trustee for the Italian Subsidiary. Mr. Magagnoli has not joined in any actions taken by the Italian Trustee.

4. On May 18, 2011 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (as amended, the “Bankruptcy Code”) in this Court. The Debtor is a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Rebecca A. Roof is the Chief Restructuring Officer of the Debtor.

5. On May 18, 2011, the Debtor filed its Emergency Motion for Order (1) Authorizing Continued Use of Existing Business Forms and Records; and (2) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System (Docket No. 5). On May 25, 2011, the Court entered the Order Granting Debtor’s Emergency Motion for Order (1) Authorizing Continued Use of Existing Business Forms and Records; and (2) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System (the “Bank Account Order”) (Docket No. 34). The Bank Account Order authorizes the Debtor to use its existing bank accounts (the “Bank Accounts”) and open new bank accounts.

6. Prior to the Petition Date, the Italian Trustee took control of the Debtor’s books and records located in Italy, and has refused to give the Debtor access. Since her appointment, Ms. Roof has repeatedly requested access to the books and records located in Italy. The Italian Trustee has not granted Ms. Roof access to the books and records. The Italian Trustee requested

permission from the Italian Court to grant Ms. Roof access to the books and records, but has yet to gain approval from the Italian Court. Ms. Roof is now pursuing her separate request for books and records from the Italian Court.

**B. The Dispute Between Versata, the Debtor, and the Italian Trustee**

7. On October 7, 2010, the Debtor entered into that certain Technology License Agreement (the “License Agreement”) with Versata FZ-LLC (“Versata”). Under the License Agreement, the Debtor granted Versata the exclusive right to use the Global IP in the design, development, manufacture, marketing, distribution, and support of products. In exchange, Versata paid the Debtor \$3,000,000.

8. Following his appointment, the Italian Trustee sought authority to terminate the License Agreement. On May 2, 2011, the Italian Bankruptcy Court authorized the termination. The Italian Trustee asserts that as a consequence of the purported termination of the License Agreement, Versata no longer has the right to use the Global IP.

9. On May 10, 2011, Versata filed an appeal of the Italian Trustee’s purported termination of the License Agreement. Versata asserted that under the U.S. Copyright Act, 17 U.S.C. §§ 101 *et seq.*, the transfer of the Global IP to Versata under the License Agreement was essentially a transfer of ownership that cannot be terminated. Moreover, even if the transaction under the License Agreement is deemed to create a license, Versata asserted that it is entitled to retain its rights to use the Global IP regardless of the Italian Trustee’s purported termination, as provided in Section 365(n) of the Bankruptcy Code. On June 30, 2011, the Italian court in which Versata’s appeal was pending entered a decree in favor of the Italian Trustee. Versata has informed the Debtor that it intends to file further proceedings and take them to trial in challenging the outcome based upon the conclusions of the Italian Trustee regarding the location

of the intellectual property and contracts and the allegations of the Italian Trustee regarding his global jurisdiction.

10. The Italian Trustee has also recently filed a suit seeking an injunction (the “Injunction Suit”) against Versata in the Civil Court of Bologna, Italy (the “Italian Civil Court”) to prevent Versata from using the Global IP and the think3 brand and from publishing any information online claiming to have the rights to the Global IP. Versata has informed the Debtor that it intends to challenge the Injunction Suit in the Italian Civil Court. On July 21, 2011, the Italian Civilian Court granted a preliminary injunction against Versata. Upon information and belief, Versata may challenge the ruling of the Italian Civilian Court.

11. Upon information and belief, the Italian Trustee has directly contacted Versata’s customers and directed them to make payments to the Italian Trustee rather than Versata. The Italian Trustee also posted notices on the Debtor’s website alleging that Versata no longer has the right to license or use the Global IP. In addition, the Debtor recently learned that someone in Italy on a server registered to the Italian Branch has hacked into Versata’s computer system and may be using the system to direct customers to pay the Italian Trustee rather than Versata.

12. As a result of the Italian Trustee’s interference with Versata’s customers, Versata filed a complaint against the Debtor for breach of the License Agreement, tortious interference, and declaratory relief in the United States District Court for the Western District of Texas, Austin Division, in the case styled and numbered *Versata FZ-LLC v. Think3, Inc.*, Civil Action No. 1:11-cv-404 (the “Versata Lawsuit”). Versata alleges that damages continue to accrue against the Debtor as a result of the continuing breach of the License Agreement.

13. The dispute between the Italian Trustee and Versata has created considerable confusion among customers of think3 products (the “Customers”) and interfered with the

Debtor's business. As a result of the confusion, some Customers may be making payments to Versata, some Customers may be making payments to the Italian Trustee, and some Customers may have stopped making payments altogether. Until the ownership of the Global IP is finally decided by a court of competent jurisdiction, Customers may be in danger of paying twice if they make payments to a party that is ultimately not entitled to such payments. Moreover, some Customers are simply not paying for think3 products while the dispute continues. The Debtor would like to create a segregated escrow account, into which Customers of think3 products could make payments to avoid the risk of paying the wrong party and to give assurance to non-paying Customers that they can safely make payments.

14. The Debtor has negotiated a proposed settlement with Versata to resolve its disputes with Versata. On July 11, 2011, the Debtor filed its Motion to (I) Approve Compromise and Settlement of Claims by and between think3 Inc., Versata FZ-LLC, Versata Development Group, Inc., and Versata Software, Inc., (II) Assume Technology License Agreement, and (III) Approve Sale of Certain Intellectual Property Interests to Versata FZ-LLC (the "Settlement Motion"). If the Settlement Motion is ultimately granted, the escrow account requested in this Motion will help facilitate the implementation of the proposed settlement.

#### **Relief Requested and Basis Therefor**

15. By this Motion, the Debtor respectfully requests the entry of an amended Bank Account Order, substantially in the form attached hereto as **Exhibit A** (the "Amended Order"). The Amended Order would allow the Debtor to open a segregated escrow account (the "Escrow Account") at Comerica Bank. Customers could then pay fees for think3 products into the Escrow Account. The Debtor would then hold all payments from Customers in escrow until it can be determined whether Versata, the Debtor, or the Italian Trustee is entitled to the payments.

16. Section 105 of the Bankruptcy Code provides in pertinent part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Customers currently are at risk of paying twice for think3 products because both Versata and the Italian Trustee are demanding payment. The Amended Order would give Customers greater confidence in purchasing think3 products because Customers would no longer risk having to pay twice for the same products. This protection would preserve the think3 brand, which would in turn give the Debtor greater ability to generate revenue for its development of the China IP. The think3 brand is essential to the Debtor’s ability to reorganize.

17. The Debtor submits that the United States is the proper forum for collecting payments for think3 products. The location of the contracts, intellectual property and other intangibles is the United States and not Italy. In light of the Italian Court’s six week delay in granting even the most basic request to access the Debtor’s books and records in Italy, there is a lack of transparency in Italy. This lack of transparency would make it difficult for any parties in interest to determine whether Customers are paying for think3 products and how those payments are being held or used by the Italian Trustee. The Amended Order requires the Debtor to hold the payments in escrow in a segregated bank account until it can be determined whether the Debtor, Versata, or the Italian Trustee is entitled to the proceeds. In addition, the Debtor will serve notice of the Amended Order on all known Customers. The Debtor believes that creation of the Escrow Account in the United States provides the greatest amount of transparency and security for all parties in interest and customers.

WHEREFORE, the Debtor respectfully requests that the Court (i) enter the Amended Order substantially in the form attached hereto as **Exhibit A**; and (ii) grant such other and further relief to which the Debtor is justly entitled.

Dated: August 1, 2011

Respectfully submitted,

**HAYNES AND BOONE, LLP**

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**COUNSEL TO DEBTOR-IN-POSSESSION**

## **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading was served on those individuals or entities appearing on the Master Service List dated July 29, 2011 via first class United States mail, postage prepaid and properly addressed, on this 1st day of August, 2011.

/s/ Brooks Hamilton

Brooks Hamilton

## **MASTER SERVICE LIST**

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### **Debtor's Crisis Managers**

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### **U.S. Trustee**

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### **Counsel to Gensym Cayman, L.P., Versata FZ-LLC, Versata Development Group, Inc., Versata Software, Inc., and ESW Capital, LLC**

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#### **Equity Interest Holder**

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#### **Governmental and Taxing Authorities**

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Texas Comptroller of Public Accounts  
Revenue Accounting Division - Bankruptcy Section  
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Texas Workforce Commission  
Bankruptcy Section  
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#### **Insurance Companies**

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### **Twenty Largest Unsecured Creditors**

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#### **Parties Requesting Notice**

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